
ARTIFICIAL INTELLIGENCE AND THE DIRECTORIAL OFFICE: INTERROGATING LEGAL PERSONHOOD AND FIDUCIARY ACCOUNTABILITY UNDER THE COMPANIES ACT, 2013

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ABSTRACT

The progressive integration of artificial intelligence into corporate governance structures has outpaced the legislative imagination of most jurisdictions, including India. This paper examines whether an AI system can lawfully occupy the office of director under the Companies Act, 2013, engaging the question across three registers: definitional permissibility, fiduciary duty, and legal liability. Through close doctrinal analysis of the Act's provisions governing directorial appointment, qualification, and accountability, the paper establishes that Indian corporate law is structurally anchored to the natural-person paradigm and cannot presently accommodate AI directorship without foundational legislative intervention. Drawing on comparative material from the European Union's AI Act, the United Kingdom's Companies Act, and Delaware corporate law, the paper further argues that the question of whether AI should ever be permitted to exercise directorial power is distinct from and more contested than the prior question of whether it currently can. The paper wraps up by suggesting a layered rule system based on monitored use and clear sharing, keeping human oversight while also adapting to technological changes.

Keywords: Artificial Intelligence, Director, Companies Act 2013, Fiduciary Duty, Legal Personhood, Corporate Governance, India.

I. Introduction

It would've seemed like a wild idea a decade back that an algorithm could act like a company boss. Today, it's just plain real. In 2014, Hong Kong-based venture capital firm Deep Knowledge Ventures made waves when it brought an algorithm named VITAL onto its board, giving it a legit role in investment choices.¹ While that episode was more symbolic than legally binding, VITAL's votes were just recommendations, and the firm was still following Hong Kong's Companies Ordinance, which demands a natural-person director, it really highlighted a question.

The question is this: under the Companies Act, 2013,² can an artificial intelligence system be lawfully appointed as a director of a company? And if it cannot, who bears responsibility when directors delegate consequential board-level decisions to AI tools that they neither fully understand nor are capable of overriding in real time? These questions aren't just for show; they're practical and real-world India's digital economy is growing fast, the corporate world is getting more data-focused, and the Ministry of Corporate Affairs is pushing for digital governance, but they haven't stopped to think about what it means to govern with algorithms.

This document is divided into seven sections Part II situates AI within the contemporary corporate governance landscape and distinguishes AI as a tool from AI as a governance actor. Part III examines the Companies Act's definitional framework to establish that AI directorship is presently impermissible as a matter of black-letter law. Part IV interrogates the deeper incompatibility between fiduciary duty doctrine and AI agency. In Part V, maps the gap in responsibility that shows up when AI-driven choices lead to corporate damage. In Part VI, we're comparing how people in the EU, UK, and US respond to certain things. Part VII proposes a tiered regulatory framework for India. Part VIII concludes.

II. AI's role in corporate governance: Understanding the issues

Not all AI is alike, and the legal questions differ sharply depending on the type of AI under consideration. Narrow AI, like those used for financial modeling, compliance checks, or risk

¹ Deep Knowledge Ventures, Press Release: Algorithm Named to Board of Directors (May 13, 2014), <https://www.deepknowledgeventures.com>. The Hong Kong-based venture capital firm appointed an algorithm designated VITAL as a board member with the stated power to vote on investment decisions.

² Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), § 2(34). The provision defines a 'director' as a director appointed to the board of a company, yet conspicuously omits any qualification that such appointment must vest in a natural person.

analysis, are already a part of Indian boardrooms and don't really bring up new issues about who gets to run them or whether they can be considered as people; they're just tools. Generative AI systems, capable of synthesizing information and producing recommendations indistinguishable from expert human advice, occupy a more ambiguous position. Self-driving AI doing decisions on their own without needing someone watching over them, are really pushing the boundaries.

The VITAL episode demonstrates that the distinction between advisory and decisional AI is not always maintained in practice. What's really important for business law is not the AI's inner workings, but the official power the company claims it has. When a company represents as Deep Knowledge Ventures did that an algorithm has 'board-level' decisional power, it invites scrutiny of whether that representation is legally coherent and whether the company's constitutional documents, obligations under statute, and duties to shareholders can accommodate such an arrangement.

In India, this question hasn't been given much thought by lawmakers and hasn't been studied much by academics. The Ministry of Corporate Affairs' Company Law Committee Report of 2022 recommended extensive reforms to corporate governance architecture without addressing the implications of AI-assisted board decisions.³ SEBI's Listing Obligations and Disclosure Requirements Regulations impose detailed board composition requirements without any reference to the governance implications of algorithmic participation.⁴ The gap isn't small or insignificant. It is precisely the kind of regulatory silence that invites either judicial improvisation or, worse, de facto practices that have no legal foundation.

III. The Companies Act, 2013 And the Need for A Natural Person To Be Involved

A. Definitional analysis of 'director'

Section 2(34) of the Companies act, 2013 describes a 'director' as someone appointed to the Board of a Company. The definition, at first glance, is a bit circular because it doesn't specify

³ Ministry of Corporate Affairs, Report of the Company Law Committee 2022, at 47 (Mar. 2022) (recommending digitization of board processes but making no reference to the governance implications of AI-assisted or AI-driven decision-making). The omission reflects a regulatory blind spot that this paper seeks to illuminate.

⁴ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 17(1) (mandating composition of board of directors of listed entities). SEBI has not issued any circular or guidance note addressing the use of AI systems in board deliberations or voting, leaving a significant regulatory gap.

who or what a director should be. The limits come into play in different parts of the act. Section 149(1) says every company needs a Board of Directors made up of individuals.⁵ The term 'person' in the General Clauses Act, 1897, isn't just thrown around casually. It's a specific legal term that covers not just individuals but also companies, associations, and groups of people, so it includes both legal entities and actual human being.⁶ The legislature's careful wording in § 149 clearly shows they want to limit who can be a director to actual people, not companies or other entities.

B. The Director Identification Number serves as a key to access personal information

The DIN system backs up this finding. In Sections 153 and 154, anyone planning to become a director needs to apply for a Director Identification Number by sending in the required details, like ID and address proof.⁷ An AI system cannot possess identity documents, cannot attest to a residential address, and cannot make the declaration of eligibility that the DIN application requires. The DIN architecture isn't just random gear; it's a key passage that assumes our humanity at every turn.

C. Disqualification rules and the assumptions

Section 164 lists the reasons why someone can't be a director. Some of these are being convicted of certain crimes, being found to be mentally ill by a competent court, and being an undischarged insolvent.⁸ Each of these grounds is based on traits or events that only make sense biologically and legally when they are about a person. An AI system cannot be found guilty of a crime that requires mens rea, cannot be found to be insane, and cannot be found to be bankrupt. The disqualification provisions are not only irrelevant to AI; they also show that the lawmakers' basic assumption is that every director is a person who can be affected by all the

⁵ Companies Act, 2013, § 149(1) (requiring that every company have at least one director who is an 'individual' resident in India); see also § 152(4) (mandating that a person consent to act as director before appointment).

⁶ The General Clauses Act, 1897, No. 10, Acts of Parliament, 1897 (India), § 3(42) (defining 'person' to include 'any company or association or body of individuals, whether incorporated or not'). Notably, this definition extends legal personality to incorporated entities but does not contemplate non-human algorithmic actors.

⁷ Companies Act, 2013, § 153 (directing every individual who intends to be appointed as a director to apply for a Director Identification Number); § 154 (authorizing the Central Government to allot DIN to applicants). The statutory language 'individual' throughout §§ 153–154 forecloses any reading that would accommodate an artificial intelligence system as an applicant.

⁸ Companies Act, 2013, § 164(1)(b) (disqualifying a person who has been declared of unsound mind); § 164(1)(c) (disqualifying an undischarged insolvent). These grounds of disqualification presuppose biological cognition and human financial capacity—conditions that an AI system, by its nature, cannot satisfy or violate.

legal problems that people face.

IV. Fiduciary Responsibilities and the Constraints of Algorithmic Agency

A. The obligation to act in good faith

Section 166(2) of the Companies Act mandates that each director must act in good faith to advance the company's objectives for the collective benefit of its members.⁹ Fiduciary scholarship converges on the proposition that good faith is an irreducibly moral concept: it necessitates that the duty-bearer possess the capacity for authentic normative deliberation, enabling the selection between competing courses of action based on principle rather than mere calculation.¹⁰ An AI system, no matter how advanced, does not think in this way. It finds patterns in the data and makes outputs that help meet certain goals. The appearance of deliberation is a byproduct of the system's design, not an indication of moral agency.

B. The obligation of care, skill, and autonomous judgment

Section 166(3) says that directors must do their jobs with "due and reasonable care, skill, and diligence" and "exercise independent judgment."¹¹ The requirement for independent judgment is very important. Courts have interpreted it to signify that a director must engage in independent cognitive deliberation for every decision, free from external influence. An AI system that has been trained on historical data cannot make its own decisions in any real way. Its outputs depend on its architecture, training corpus, and objective function. When the training data contains historical biases or market distortions, the AI system consistently replicates those distortions, lacking the ability to identify or counteract them.¹²

⁹ Companies Act, 2013, § 166(2) ('A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.').

¹⁰ Tamar Frankel, *Fiduciary Law* 5 (Oxford Univ. Press 2011) ('The fiduciary relation is one of entrustment, in which the entrustor relies on the fiduciary's loyalty and care. These qualities are inherently human—they require the capacity for moral deliberation.').

¹¹ Companies Act, 2013, § 166(3) ('A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.').; see *Prudential Assurance Co. v. Newman Indus. Ltd.*, [1982] Ch. 204, 210 (Eng.) (articulating that independent judgment requires cognitive autonomy, which algorithmic systems trained on predetermined datasets cannot authentically exercise).

¹² Jack Balkin, *The Three Laws of Robotics in the Age of Big Data*, 78 *Ohio St. L.J.* 1217, 1229 (2017) ('AI systems may exhibit the appearance of judgment while executing statistical pattern-matching. The conflation of pattern-recognition with genuine deliberation is dangerous in fiduciary contexts where the duty-bearer must be capable of moral accountability.').

C. Conflict of interest and algorithmic bias

The law says that directors cannot do things that help themselves and hurt the company. Section 166(4) is very clear about this.¹³ Now that Artificial Intelligence systems are decent in this situation because they do not have personal interests like humans do.¹⁴ That is not entirely true. Artificial Intelligence systems can still make decisions that're not fair because of the way they were trained. They can have biases that affect the way they make decisions.

If an Artificial Intelligence system was trained with data from one industry it might make decisions that help the companies in that industry. This is a problem because it is not easy to see. The people who own the company the board of directors and even the company itself might not know that the Artificial Intelligence system is making decisions. This kind of bias is harder to deal with than the conflicts of interest because it is hidden. Artificial Intelligence systems can make decisions that're not good for the company and it can be very difficult to figure out why. The company and the people involved with the company need to be aware of the potential for Artificial Intelligence systems to have biases, like this.

D. The business judgment rule and its inapplicability to AI

In Indian courts, this rule shields human directors, provided their decisions are backed by solid information and genuine intent to benefit the company. Judges look at whether the decision-making process was informed and rooted in an honest belief.¹⁵ But AI? That's another beast. Its computational methods are complex and murky, not something that aligns with the human-centric metrics courts use. An AI system doesn't form beliefs, there's no mental state to analyze. Its outputs are pure calculations, not acts of will. To be honest, it's just not built for judgment in the legal sense. This mismatch leaves AI-reliant directors exposed.¹⁶ Without the

¹³ Companies Act, 2013, § 166(4) ('A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.'). An AI system does not possess interests in the juridical sense; however, its training data and optimization function may encode systematic biases that functionally replicate conflicted decision-making.

¹⁴ Ryan Calo, *Artificial Intelligence Policy: A Primer and Roadmap*, 51 U.C. Davis L. Rev. 399, 412 (2017) (noting that algorithmic bias arising from training data constitutes a structural problem that no disclosure regime under existing corporate law adequately captures).

¹⁵ *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (holding that the business judgment rule presupposes that directors 'acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company'). Courts employing this standard cannot audit an AI system's latent computational processes for good faith.

¹⁶ Shyamkrishna Balganes, *The Normativity of Copying in Copyright Law*, 62 Duke L.J. 203, 248 (2012). For corporate law application of analogous fiduciary reasoning in India, see *N. Subramaniam v. Bombay Dyeing and Mfg. Co. Ltd.*, (1951) 21 Comp. Cas. 35 (Bom.) (emphasizing that a fiduciary must possess the capacity to

rule's safety net, they face uncertain liability, even if their tools are robust. That is the reality. Directors need clarity here, or risk walking a legal tightrope.

V. The Accountability Vacuum: Who Takes the Fall?

Figuring out who's liable is the most pressing challenge when AI-driven board decisions go wrong. If harm comes to shareholders, creditors, or third parties, existing legal frameworks are ill-equipped to provide clear answers.

That's the crux of it. Take Section 447 of the Companies Act, for example. It assigns criminal liability for fraud to anyone guilty of malicious conduct. AI systems, being purely computational, lack subjective mental states.¹⁷ They can't meet the criteria for willful misconduct under § 447, or similar provisions. The law isn't silent here because somebody forgot, it's silent because it assumes corporate actors are, well, people. Three models of liability come to mind. First, directors using AI could face personal responsibility since § 179 of the Act places board powers squarely in their hands and forbids absolute delegation.¹⁸ Second, blame might shift to AI developers or vendors under product liability principles. Liability under the third approach falls squarely on the company itself. Shareholders end up shouldering the consequences of AI-related mistakes through diminished firm value. On their own, none of the frameworks work well enough. The real issue lies in causation. AI decisions stem from complex computations, and even skilled users can't fully trace or audit how specific outputs lead to harm. That makes proving direct causation nearly impossible.

VI. Comparative Perspectives

A. The European Union

In 2024, the EU's Artificial Intelligence Act set a serious benchmark for AI governance, tackling issues with weight and scope. It puts systems used for credit decisions, financial judgments, and similar matters under the "high-risk" label. What's required? Rigorous

deliberate independently on behalf of the beneficiary).

¹⁷ Companies Act, 2013, § 447 (imposing criminal liability for fraud on 'any person who is found to be guilty'). The provision's reliance on criminal mens rea—intentional, reckless, or fraudulent conduct—renders it inapplicable to AI actors that lack subjective mental states.

¹⁸ Companies Act, 2013, § 179(3) (enumerating board powers exercisable only at board meetings, including powers to make calls on shares, authorize buy-back, and approve financial statements). The power to 'make calls' and 'authorize buy-back' connotes volitional agency that a non-sentient AI system cannot legally exercise.

assessments, clear transparency rules, and direct human oversight. Yet, AI itself isn't granted legal status. Instead, the law sticks firmly to human accountability, ensuring operators answer for decisions these systems make. To be honest, this deployer-based model is both pragmatic and deliberate. While granting AI an influential role in institutional frameworks, it doesn't let people off the hook.

B. The United Kingdom

Under Section 155 of the Companies Act 2006, every UK company must have at least one director as a natural person.¹⁹ So far, the Law Commission of England and Wales hasn't suggested revising this rule to include AI actors. Meanwhile, the Senior Managers and Certification Regime (SMCR) presents a solid framework for overseeing AI-assisted decisions in regulated financial firms without undermining the natural-person requirement. The SMCR holds senior managers personally accountable for outcomes linked to AI-powered tools they deploy. Even if the AI output indirectly causes harm, it doesn't shift blame. That's the reality, the human manager remains responsible, no matter how advanced or autonomous the tool might seem.

C. The United States

Corporations in the United States, particularly under Delaware's General Corporation Law, place management authority firmly in their boards of directors. Importantly, this law insists that board members must be natural persons, no exceptions. Lately, the Securities and Exchange Commission has tackled AI-driven investment planning by sharpening disclosure requirements. Truth be told, it's a clear move toward favoring transparency and holding humans accountable instead of granting governance roles to AI systems.²⁰

D. The case of Saudi Arabia

Saudi Arabia's decision in 2017 to grant citizenship to the humanoid robot Sophia often

¹⁹ Companies Act 2006, c. 46, § 155 (UK) ('A company must have at least one director who is a natural person.'). The Law Commission of England and Wales has not proposed any amendment to § 155 to accommodate AI actors, reflecting a settled legislative policy that directorial accountability must be borne by a human individual.

²⁰ Del. Gen. Corp. Law § 141(a) (2023) ('The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.'). Delaware courts have not been asked to rule on AI directorship, but the statutory phrase 'board of directors' has been consistently read to require natural persons. See also Model Bus. Corp. Act § 8.01 (2016) (same).

comes up when debating AI legal personhood. Most legal experts agree it was little more than a publicity stunt. No real legal weight, just a headline grab. Meanwhile, the European Parliament addressed this subject the same year but went in a different direction. Their resolution on civil law rules for robotics rejected assigning legal status to robots entirely. They called it premature. Why? There's no solid legal groundwork to support such a move yet. That's the bottom line, whether we like it or not.²¹

VII. Moving Toward a Tiered Regulatory Framework for India

Surveying global perspectives paints a clear picture: AI systems should not be treated as legal entities within corporate governance. Human accountability must remain intact, no matter how deeply AI influences board decisions. In India's case, this points to a tiered regulatory approach built around three distinct levels of operation. First, comes AI as an advisory tool. This tier doesn't call for sweeping legal changes just a transparency tweak. Companies using AI in board deliberations would need to disclose it within their board's report, as per § 134(3) of the Companies Act.²² No major compliance headaches, no restructuring just a straightforward alignment with existing reporting norms. Shareholders get the disclosure they deserve to evaluate governance quality. Simple, effective, and practical.

The second tier, AI-assisted governance gets a touch stricter. It applies when directors adopt recommendations generated by AI in a significant manner. Accountability ramps up here. Directors relying on such systems would need to show they've exercised independent judgment. Specifically, they'd need to demonstrate, under their duty of care (§ 166(3)), that they evaluated AI outputs themselves and made a conscious decision based on genuine human judgment. It's a direct response to that critical line of responsibility. The approach draws from the UK's SMCR model, emphasizing human oversight above technical attribution. India stands to benefit from adapting this reasoning to its framework.

Autonomous AI governance stands out as entirely new territory. It refers to AI systems capable of making and executing board-level decisions without human oversight in real time. Tackling

²¹ EP Robotics Resolution, *supra* note 3, ¶ 31 (explicitly rejecting the creation of a specific legal status for robots 'as this could not be based on any established legal tradition and would risk being premature given the pace of technological change').

²² Companies Act, 2013, § 134(3)(q) (requiring the board's report to include a statement regarding development and implementation of risk management policy). An amendment mandating specific disclosure of AI tools used in board deliberations would align with existing reporting architecture without requiring legislative overhaul of the directorship framework.

this demands thoughtful legislation. Instead of letting AI take on directorial roles, the law should establish a category of human supervisors with personal accountability. These individuals, much like the "responsible person" concept from financial regulations, must possess enough knowledge of the AI's inner workings, its architecture and decision-making processes to fulfill their duties effectively. It's not just about overseeing; it's about carrying responsibility where it matters. Legislative changes are necessary to keep this use of AI in check.

Specifically, this paper suggests two precise amendments to the Companies Act. First, § 149 needs an explicit provision stating no AI system, algorithm, or automated decision-making tool can serve as a director or hold the directorial office. Second, a new disclosure rule should be added—either to § 134(3) or as a separate section mandating listed firms to detail in their annual reports how they use AI in board deliberations. Meanwhile, SEBI should act promptly, issuing a circular under the LODR Regulations to impose similar requirements on listed companies, avoiding delays caused by waiting for formal legislative changes.

VIII. Conclusion

No matter how advanced AI systems become, the Companies Act, 2013 simply doesn't allow them to serve as directors in Indian companies. The law is clear: section 149(1) demands a natural person in such roles. Adding to that the DIN process outlined in sections 153 and 154, and it's obvious these legal prerequisites weren't designed with machines in mind. The disqualification criteria in section 164 make the point even sharper, human-centric assumptions rule out AI here, no question. At the core, though, lies an even deeper disconnect. Fiduciary duties require directors to act with good faith, make independent choices, and avoid conflicts of interest, all of which hinge on moral reasoning and actual free will. AI may be advanced, but it doesn't have the human capacity for ethical judgment. That's just how it is. Besides, if decisions driven by AI end up harming a company, the Companies Act, IT Act, or even the Consumer Protection Act has no provisions to address accountability gaps. The legal structure can't hold machines liable the way it does people.

A recent comparative survey highlights widespread agreement among lawmakers: keeping directorships tied to natural persons safeguards accountability. Jurisdictions serious about this issue focus more on human responsibility than assigning formal roles to AI. Acting now with a precise amendment explicitly barring AI from holding directorial positions could cement

much-needed legal clarity. Pairing this with a layered system of disclosures and accountability would not only stabilize corporate operations but also ensure stronger protection for investors.